IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Revision No. 3542 of 2006

Date of decision: 1.9.2006

Piara Singh --- Petitioner

Versus

Zimidara Commission Agent, Village Chamiari through
its Prop. Sampuran Singh (now deceased) through his L.Rs

--- Respondent

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

PRESENT: Mr. N.K. Manchanda, Advocate for the petitioner.

Mr. B.S. Saini, Advocate for
Mr. Premjit Kalia, Advocate for respondents.

JUDGMENT

This revision is directed against the order dated 17.4.2006 passed by the District Judge, Amritsar whereby defendant's application for condonation of 6 days delay in filing the appeal along with the appeal was dismissed.

A suit for rendition of accounts and for passing a preliminary decree for recovery of amount due was decreed against the defendant. The defendant-petitioner preferred appeal before the District Judge. Since the appeal was filed after the expiry of period of limitation prescribed in law, an application under Section 5 of the Limitation Act was also filed for condonation of delay. The application was contested by the plaintiff. Consequently, the following issue was framed:

"Whether there is sufficient cause to condone the delay in filing the appeal? OPA"

The District Judge after appraising the evidence and hearing counsel for the parties decided the issue against the defendant. It was observed that the defendant had not been able to show sufficient cause for not filing the appeal in time.

Learned counsel for the petitioner submitted that there was a delay of only six days in filing the appeal before the District Judge. The same was neither deliberate nor intentional. The counsel submitted that the suit was decreed on 16.3.2005 and he applied for certified copy of the order on 21.3.2005 which was prepared on 2.4.2005 and was delivered to him on 12.4.2005. The defendant was under a mistaken belief that the limitation was to run from the date of delivery of certified copy but on 2.5.2005 he came to know that the limitation to file the appeal runs from the date of preparation of certified copy which in the present case was prepared on 2.4.2005. Counsel appearing on behalf of the respondent, on the other hand, stated that ignorance of law cannot be used as a tool to overcome the rigors of law and thus the impugned order was perfectly justified and does not call for interference.

After hearing learned counsel for the parties and perusing the impugned order, I find that the approach of the first appellate court was not justified in the facts and circumstances of the case. The defendant had specifically stated in the application for condonation of delay that he was under a wrong impression regarding the limitation to file the appeal. The defendant had further pleaded that as soon as the fact regarding limitation to file appeal came to his knowledge, he took immediate and effective steps to file the appeal and there occurred a delay of six days in filing the appeal. The defendant had further stated that he is a man of 60 years and generally remained sick. Ordinarily this court refuses to condone delay in

cases where it comes to the conclusion that the delay occurred on account of deliberate and intentional act on the part of the party and has been caused to delay the decision of the case. In the present case the delay in filing the appeal does not appear to be deliberate or intentional and it cannot be said that the defendant-petitioner would have gained anything by filing the appeal late by six days. I find that sufficient cause was shown by the defendant in not filing the appeal within the period of limitation.

In view of the above, the revision petition is accepted and the impugned order dated 17.4.2006 is set aside. The first appellate court is directed to entertain the appeal of the defendant-petitioner and dispose of the same in accordance with law. The parties through their counsel are directed to appear before the District Judge, Amritsar on 26.10.2006.

(AJAY KUMAR MITTAL)
JUDGE

September 1, 2006
MALIK